

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

BANCO POPULAR DE PUERTO
RICO

Plaintiff

vs

FERNANDO LUIS
ROSADO-RAMIREZ, MARIA ISABEL
RIVERA-VAZQUEZ, and the conjugal
partnership constituted between them

Defendants

vs

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for Doral
Bank

Counterclaim-Defendant

CIVIL 15-1641CCC

OPINION AND ORDER

Before the Court is plaintiff Federal Deposit Insurance Corporation, as Receiver of Doral Bank's ("FDIC-R's") Motion to Dismiss Counterclaim for Lack of Prosecution (**d.e. 18**) filed on February 8, 2017. The motion is unopposed. For the reasons stated below, the Court **GRANTS** plaintiff's motion to dismiss.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 4, 2013, prior to FDIC-R's appointment as receiver of Doral Bank, Doral Bank commenced a foreclosure action against defendant María Isabel Rivera-Vázquez ("Rivera-Vázquez") and Fernando Luis Rosado-Ramírez ("Rosado-Ramírez") and their conjugal partnership in the Commonwealth of Puerto Rico Court of First Instance, Ponce Part. On September 26, 2014, defendant Rivera-Vázquez filed a counterclaim in said court alleging that Doral Bank had failed to notify her that the loan was in arrears and that the purpose of Doral's complaint was to deprive her of her

mortgaged property. On February 27, 2015, the FDIC-R was appointed receiver of Doral Bank.¹

On May 26, 2015, the FDIC-R removed the instant case to this Court. (d.e. 1). On October 17, 2016, this Court entered an order substituting Banco Popular de Puerto Rico as plaintiff in place of Doral Bank, and FDIC in place of Doral Bank as counterclaim defendant. (d.e. 16). As of this date, Rivera-Vázquez has not entered an appearance, or filed any documents. FDIC-R moves to dismiss defendant's counterclaim pursuant to Rule 41(b) and (c) of the Federal Rules of Civil Procedure on the grounds that defendant has failed to prosecute the case.

II. DISCUSSION

Rule 41(b) provides for the involuntary dismissal of an action: “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b). “It expressly authorizes a district court to dismiss a case with prejudice in order to punish a plaintiff for failure to prosecute.” *Jardines Ltd. P’ship v. Exec. Homeseach Realty Servs., Inc.*, 178 F.R.D. 365, 366 (D.P.R. 1998) “[T]he provisions of this rule apply to the dismissal of any counterclaim” *George v. Martin*, No. CIV. 432/1999, 2001 WL 1568480, at *3 (Terr. V.I. Oct. 29, 2001) (quoting Fed. R. Civ. P. 41(c)).

A dismissal for lack of prosecution is a harsh sanction “which should be employed only when the district court, in the careful exercise of its discretion, determines that none of the lesser sanctions available to it would truly be

¹Doral Bank was closed by the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico on the same date. By operation of federal law, the FDIC-R, as receiver, succeeded to all of Doral's rights, titles, powers, privileges, assets, and liabilities, including Doral's interests and status as a party in this pending action. See 12 U.S.C. §§ 1821(d)(2)(A) and 1821(d)(2)(B).

appropriate.” *Zavala Santiago v. Gonzalez Rivera*, 553 F.2d 710, 712 (1st Cir. 1977).

The instant case has been on the Court’s docket since it was removed from the Commonwealth court by counter-defendant on May 26, 2015. Copies of the notice of removal and the FDIC-R’s motion for substitution of party were served on Rivera through her attorney. As of this date, counter-plaintiff has not appeared. Accordingly, we find it proper to dismiss Rivera’s counterclaim against FDIC-R.

III. CONCLUSION

In light of the foregoing, FDIC-R’s Motion to Dismiss Defendant’s Counterclaim (**d.e. 10**) and the Motion Requesting that the Motion to Dismiss be Taken Under Advisement without Objection (**d.e. 19**) are **GRANTED**. Accordingly, the Court will enter judgment dismissing defendant’s counterclaim.

SO ORDERED.

At San Juan, Puerto Rico, on April 12, 2017.

S/CARMEN CONSUELO CEREZO
United States District Judge